

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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BOBBY J. CLARK, JR.,  
Plaintiff,

v.

TRANS UNION LLC; EXPERIAN  
INFORMATION SOLUTIONS, INC.;  
EQUIFAX INFORMATION SERVICES,  
LLC; ONEMAIN FINANCIAL GROUP,  
LLC; and ALLY FINANCIAL INC.,

Defendants.

No. 2:24-cv-00783 WBS CKD

MEMORANDUM AND ORDER RE:  
EXPERIAN'S MOTION TO COMPEL  
ARBITRATION

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Plaintiff Bobby Clark brought this action against defendants Trans Union LLC, Experian Information Solutions Inc., Equifax Information Services LLC, OneMain Financial Group LLC, and Ally Financial Inc., alleging violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., and the California Consumer Credit Reporting Agencies Act, Cal. Civ. Code § 1785 et seq. Defendant Experian Information Solutions now moves to compel plaintiff to arbitrate his claims against Experian.

1 (Docket No. 43.)

2 I. Discussion

3 Defendant Experian Information Solutions, Inc. ("EIS")  
4 is a credit reporting agency. (Compl. (Docket No. 1) ¶ 19). EIS  
5 is affiliated with ConsumerInfo.com, Inc., which also does  
6 business as Experian Consumer Services (collectively, "CIC/ECS").  
7 (See Smith Decl. (Docket No. 32-4 at 1-5) ¶ 1-2.) Both EIS and  
8 CIC/ECS are wholly-owned subsidiaries of Experian Holdings, Inc.  
9 (Id. ¶ 2.) Plaintiff signed up for a credit-monitoring account  
10 via the CIC/ECS website (see Clark Decl. (Docket No. 44-1) ¶ 4;  
11 Smith Decl. ¶ 3),<sup>1</sup> which had Terms of Use containing an  
12 arbitration agreement.

13 Plaintiff alleges that in 2023, he paid off outstanding  
14 balances on several past-due accounts, which Experian continued  
15 to report as outstanding. (Compl. ¶¶ 53-59, 60-65.) Despite  
16 disputes filed by plaintiff, Experian did not correct the account  
17 balances on plaintiff's credit reports. (See id. ¶¶ 66-68, 77,  
18 170, 173.) Plaintiff's claims allege that Experian "failed to  
19 adequately review all of the information provided to it" and  
20 "failed to conduct a reasonable reinvestigation" of plaintiff's  
21 disputes. (Id. ¶¶ 78-79, 169, 172.)

22 The Federal Arbitration Act ("FAA") provides that a  
23 written provision in a "contract evidencing a transaction  
24 involving commerce to settle by arbitration a controversy

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25  
26 <sup>1</sup> Plaintiff concedes that he signed up for an "Experian  
27 account," but does not specify how he did so. (See Clark Decl. ¶  
28 4.) Defendant's declaration states that CIC/ECS business records  
show plaintiff signed up for an account via the CIC/ECS website  
(Smith Decl. ¶ 3), which plaintiff does not dispute.

1 thereafter arising out of such contract . . . shall be valid,  
2 irrevocable, and enforceable, save upon such grounds as exist at  
3 law or in equity for the revocation of any contract." 9 U.S.C.  
4 § 2. The FAA "leaves no place for the exercise of discretion by  
5 a district court, but instead mandates that district courts shall  
6 direct the parties to proceed to arbitration on issues as to  
7 which an arbitration agreement has been signed." Dean Witter  
8 Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985).

9 "[T]he FAA limits courts' involvement to determining  
10 (1) whether a valid agreement to arbitrate exists and, if it  
11 does, (2) whether the agreement encompasses the dispute at  
12 issue." Cox v. Ocean View Hotel Corp., 533 F.3d 1114, 1119 (9th  
13 Cir. 2008) (internal quotation marks omitted).

14 A. Existence of Arbitration Agreement

15 Plaintiff argues that the declaration of CIC/ECS  
16 employee Dan Smith fails to establish the existence of an  
17 arbitration agreement between the parties.<sup>2</sup> This argument lacks  
18 merit.

19 According to his declaration, Mr. Smith has been the  
20 Director of Product Operations at CIC/ECS since January 2010.

21 <sup>2</sup> Plaintiff does not appear to meaningfully dispute the  
22 veracity of Mr. Smith's declaration. Rather, plaintiff objects  
23 to the declaration on the ground that Mr. Smith lacks personal  
24 knowledge. However, this type of objection is "duplicative of  
25 the summary judgment standard itself." Alvarez v. T-Mobile USA,  
26 Inc., 2:10-cv-2373 WBS GGH, 2011 WL 6702424, at \*3 (E.D. Cal.  
27 Dec. 21, 2011). "Statements based on improper legal conclusions  
28 or without personal knowledge are not facts and can only be  
considered as arguments, not as facts, on a motion for summary  
judgment. Instead of challenging the admissibility of this  
evidence, lawyers should challenge its sufficiency." Id.  
Because plaintiff's evidentiary objection is "superfluous" at  
this stage, it is hereby OVERRULED. See id.

1 (Smith Decl. ¶ 1.) His job duties require that he be familiar  
2 with “how consumers enroll, the forms they must complete to  
3 enroll, as well as the Terms of Use governing such services,”  
4 along with the “electronic databases that store consumer  
5 enrollment information, including the webpages a consumer would  
6 have encountered to complete their enrollment . . . , the  
7 personally identifiable information entered when enrolling, which  
8 links or buttons the consumer clicked on, and date and time of  
9 the consumer’s acceptance of the Terms of Use.” (Id.) Mr. Smith  
10 states that he reviewed the CIC/ECS database and found that  
11 plaintiff signed up for an account on February 21, 2018. (Id. ¶  
12 3.) He also describes the webpage plaintiff was presented with  
13 in order to enroll. (See id.)

14 As the Ninth Circuit has explained, “an enforceable  
15 contract will be found . . . if: (1) the website provides  
16 reasonably conspicuous notice of the terms to which the consumer  
17 will be bound; and (2) the consumer takes some action, such as  
18 clicking a button or checking a box, that unambiguously manifests  
19 his or her assent to those terms.” Berman v. Freedom Fin.  
20 Network, LLC, 30 F.4th 849, 856 (9th Cir. 2022).

21 Under this standard, the Smith declaration is plainly  
22 sufficient to establish that plaintiff “affirmatively  
23 acknowledge[d] the agreement.” See Nguyen v. Barnes & Noble  
24 Inc., 763 F.3d 1171, 1176 (9th Cir. 2014). The declaration  
25 explains that on the webpage where plaintiff enrolled,  
26 “[i]mmmediately below the boxes to enter and confirm his password,  
27 was the following disclosure: ‘By clicking “Submit Secure Order”:  
28 I accept and agree to your Terms of Use Agreement, as well as

1 acknowledge receipt of your Privacy Policy and Ad Targeting  
2 Policy.'" (Smith Decl. ¶ 3.) Based on the screenshot of the  
3 website attached to the declaration, this disclosure was set in  
4 bolded black typeface and was approximately the same font size as  
5 other text on the webpage. (See Docket No. 43-2 at 9.) The  
6 phrase "Terms of Use Agreement" was "off-set in blue text and, if  
7 clicked, would have presented the consumer with the full text of  
8 the agreement" (i.e., the full agreement was hyperlinked).  
9 (Smith Decl. ¶ 4.) The "Submit Secure Order" button was  
10 "immediately below the disclosure." (Id.) This formatting made  
11 the Terms of Use disclosure "reasonably conspicuous." See  
12 Berman, 30 F.4th at 856-57.

13 The Smith declaration also explains that plaintiff did,  
14 in fact, click the "Submit" button, as he "would not have been  
15 able to successfully enroll" unless he did so. (Smith Decl. ¶  
16 4.) And it is undisputed that plaintiff created an Experian  
17 account. (See Clark Decl. ¶ 4.) Clicking a button is a  
18 sufficient manifestation of assent where, as here, "the user is  
19 explicitly advised that the act of clicking will constitute  
20 assent to the terms." See Berman, 30 F.4th at 857.

21 District courts routinely find declarations of  
22 corporate employees like the one at issue here sufficient to  
23 establish the existence of an arbitration agreement. See, e.g.,  
24 Demaria, 2023 WL 6390151, at \*10 (declaration explaining "access  
25 to records maintained by [defendant] in its usual course of  
26 business, the process by which [users] created profiles and login  
27 information" on the online platform, and "how [p]laintiff would  
28 have accessed and signed" the arbitration agreement was

1 sufficient to “establish [the declarant’s] personal knowledge”  
2 that there was a “valid” agreement between the parties). Indeed,  
3 Judge Mendez recently held that a valid agreement to arbitrate  
4 existed based on a substantially similar declaration provided by  
5 Mr. Smith, see Scribner v. Trans Union LLC, No. 2:23-cv-02722 JAM  
6 CKD, 2024 WL 3274838, at \*3-5 (E.D. Cal. July 2, 2024), as have  
7 several other judges in this District in considering similar  
8 declarations by Experian employees, see Saucedo v. Experian Info.  
9 Sols., Inc., No. 1:22-cv-01584 ADA HBK, 2023 WL 4708015, at \*4-6  
10 (E.D. Cal. July 24, 2023); Capps v. JPMorgan Chase Bank, N.A.,  
11 No. 2:22-cv-00806 DAD JDP, 2023 WL 3030990, at \*4-5 (E.D. Cal.  
12 Apr. 21, 2023).

13 In rebuttal to the Smith declaration, plaintiff’s  
14 declaration states the following: (1) “When I signed up for my  
15 online Experian account, I did not click anything that I recall  
16 indicating that I would be waiving my right to a jury”; and (2)  
17 “I did not see an arbitration agreement, or any mention of an  
18 arbitration agreement, when I signed up for my online Experian  
19 account.” (Clark Decl. ¶¶ 6-7.)

20 Even taken as true, these statements do not create a  
21 genuine dispute of fact. Plaintiff does not dispute that he  
22 visited the webpage in question, that he signed up for an  
23 account, that the webpage appeared as defendant describes it, or  
24 that he had an opportunity to review the Terms of Use. And  
25 plaintiff “cannot avoid the terms of the contract on the ground  
26 that he failed to read it before signing, especially when he had  
27 a legitimate opportunity to review it.” Lee v. Ticketmaster  
28 L.L.C., 817 F. App’x 393, 395 (quoting Marin Storage & Trucking,

1 Inc. v. Benco Contracting & Eng'g, Inc., 89 Cal. App. 4th 1042,  
 2 1049 (1st Dist. 2001), and Mohamed v. Uber Techs., Inc., 109 F.  
 3 Supp. 3d 1185, 1198 (N.D. Cal. June 9, 2015)) (cleaned up); see  
 4 also Cordas v. Uber Techs., Inc., 228 F. Supp. 3d 985, 990 (N.D.  
 5 Cal. 2017) (enforcing arbitration agreement where employee's  
 6 declaration stated that user "could not have created an Uber  
 7 account . . . without [accepting the Terms & Conditions]," and  
 8 plaintiff "offer[ed] no testimony or evidence regarding what he  
 9 did see on his screen" or otherwise rebutted the declaration).

10 In arguing that there is no valid arbitration  
 11 agreement, plaintiff relies on several cases that are both non-  
 12 binding and inapposite.<sup>3</sup> Plaintiff does cite two cases that are  
 13 directly on point, wherein out-of-circuit district courts

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14 <sup>3</sup> See Sgouros v. TransUnion Corp., 817 F.3d 1029, 1035  
 15 (7th Cir. 2016) ("the web pages on which [plaintiff] completed  
 16 his purchase contained no clear statement that his purchase was  
 17 subject to any terms and conditions of sale," but rather  
 18 "actively misl[ed]" plaintiff by indicating that "clicking on the  
 19 box constituted his authorization for TransUnion to obtain his  
 20 personal information") (emphasis in original); Lamonaco v.  
 21 Experian Info. Sols., Inc., No. 6:23-cv-1326 PGB LHP, 2024 WL  
 22 1703112, at \*5 (M.D. Fla. Apr. 19, 2024) (declaration stating  
 23 that plaintiff would not have been able to use Experian service  
 24 without assenting to terms of use was insufficient to establish  
 25 existence of agreement where plaintiff did not "admit to  
 26 accessing the defendant's website or to signing up for an  
 27 account"); Austin v. Equifax Info. Servs., LLC, No. 3:22-cv-707,  
 28 2023 WL 8646275, at \*7 (E.D. Va. Dec. 14, 2023) ("[n]othing in  
 [Experian employee's] job description disclosed personal  
 knowledge of how the system at issue works," his declaration did  
 not identify the Experian business records relied upon, and he  
 refused to testify before the court concerning the content of the  
 declaration); Dillon v. BMO Harris Bank, N.A., 173 F. Supp. 3d  
 258, 265-66 (M.D.N.C. 2016) (declaration company relied upon had  
 several deficiencies, including that declarant was not an  
 employee, did not explain how he became familiar with company's  
 practices, and did not aver that the webpage at issue was  
 presented to plaintiff).

1 concluded that Experian had failed to establish the existence of  
2 an arbitration agreement. See Cox v. Consumerinfo.com, Inc., No.  
3 3:24-cv-0033, 2024 WL 3625859, (S.D. W. Va. Aug. 1, 2024); Newton  
4 v. Experian Information Solutions, Inc., No. 6:23-cv-059, 2024 WL  
5 3451895 (S.D. Ga. July 18, 2024). Notably, these decisions (both  
6 pending appeal) relied on Sgouros, which, as indicated in  
7 footnote 3, is inapposite. For the reasons discussed herein, the  
8 court finds these decisions unpersuasive and against the weight  
9 of authority.

10 Accordingly, the court concludes that the parties are  
11 bound by the Terms of Use Agreement linked on the webpage where  
12 plaintiff created his account.

13 B. Scope of Arbitration Agreement

14 “Although gateway issues of arbitrability presumptively  
15 are reserved for the court, the parties may agree to delegate  
16 them to the arbitrator.” Momot v. Mastro, 652 F.3d 982, 987 (9th  
17 Cir. 2011). Courts may “assume that the parties agreed to  
18 arbitrate arbitrability” only if “there is clear and unmistakable  
19 evidence that they did so.” Henry Schein, Inc. v. Archer & White  
20 Sales, Inc., 586 U.S. 63, 72 (2019).

21 An “express agreement” to arbitrate arbitrability,  
22 evinced by a contract’s “language[] delegating to the arbitrators  
23 the authority to determine the validity or application of any of  
24 the provisions of the arbitration clause,” constitutes clear and  
25 unmistakable evidence. Momot, 652 F.3d at 988 (citations  
26 omitted). Where such an express delegation provision exists,  
27 unless a party opposing enforcement of the agreement  
28 “challenge[s] the delegation provision specifically, [courts]



1 must treat it as valid . . . .” Rent-A-Center, W., Inc. v.  
2 Jackson, 561 U.S. 63, 72 (2010).

3 “When the parties’ contract delegates the arbitrability  
4 question to an arbitrator, a court may not override the contract,  
5 even if the court thinks that the arbitrability claim is wholly  
6 groundless.” Henry Schein, 586 U.S. at 63. “In those  
7 circumstances, a court possesses no power to decide the  
8 arbitrability issue.” Id.


9 Here, both the original and amended Terms of Use  
10 Agreement state that “[all] issues are for the arbitrator to  
11 decide,” including “the scope and enforceability of this  
12 arbitration provision.” (See Def.’s Ex. 3 (Docket No. 43-2 at  
13 10-41) at 7; Def.’s Ex. 4 (Docket No. 43-2 at 42-57) at 3.) This  
14 provision expressly delegates the question of arbitrability to  
15 the arbitrator, and plaintiff does not argue otherwise.  
16 Accordingly, the court concludes that it must compel arbitration  
17 on the question of whether the agreement encompasses plaintiff’s  
18 claims. See Capps, 2023 WL 3030990, at \*6 (concluding that the  
19 parties “clearly and unmistakably delegated the question  
20 regarding the scope of the [agreement] to the arbitrator” where  
21 Experian arbitration agreement contained identical delegation  
22 language); Scribner, 2024 WL 3274838, at \*5 (same).

## 23 II. Conclusion

24 Because the evidence before the court indicates that a  
25 valid agreement to arbitrate exists and the agreement clearly and  
26 unmistakably delegates the issue of arbitrability to the  
27 arbitrator, the court must compel the claims against Experian to  
28 be submitted to arbitration. See Dean Witter, 470 U.S. at 218.

1 IT IS THEREFORE ORDERED that Experian's motion to  
2 compel arbitration (Docket No. 43) be, and the same hereby is,  
3 GRANTED. IT IS FURTHER ORDERED that the claims against Experian  
4 Information Solutions, Inc. are STAYED pending arbitration.<sup>4</sup>

5 Dated: September 3, 2024

  
6 **WILLIAM B. SHUBB**  
7 **UNITED STATES DISTRICT JUDGE**  
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28 <sup>4</sup> This partial stay does not affect the claims brought  
against any other defendants.